

civil rights protection & advocacy system for montana

disability rights
formerly Montana Advocacy Program **montana**

March 19, 2009

Re: HB 534 Require Audio-Video Recording of Custodial Interrogations

Dear Members of the Senate Judiciary Committee:

Disability Rights Montana supports HB 534 as it enacts one of the recommendations made by advocates to address the phenomenon of false confessions by persons with cognitive impairments caused by developmental disability, traumatic brain injury or even mental illness. This problem has been identified and doggedly tracked most prominently by Mr. Robert Perske, who in December of 2008 published accounts of 53 persons with cognitive impairments who have been exonerated of serious felonies across the United States. Most of them have occurred since 1990. This can be found at:

<http://aaid.allenpress.com/aamronline/?request=get-document&doi=10.1352%2F2008.46:468-479>.

Mr. Perske identifies that this problem is the result of some fairly consistent features of persons with cognitive impairments. First, the cognitive impairment may generally interfere with an understanding of the significance of a criminal interrogation and confession, or a Miranda warning, or the failure to assert one's desire to talk to an attorney. Second, there is often a desire to hide the cognitive impairment or try to "pass" as a person without a disability. This will cause the person to act as though he or she can fully comprehend every step of the criminal investigation when that is not the case. Third, there is a tendency to want to please authority and tell law enforcement officers or prosecuting attorneys what they want to hear, which unfortunately may be that he or she is guilty of committing a crime that they did not commit.

Disability Rights Montana supports HB 354 as it would require that confessions given during a custodial interrogation are preserved and will be available where there are issues as to whether confessions were freely given and whether they were the result of characteristics common to persons with cognitive impairments.

Thank you,

Beth Brenneman, Staff Attorney
Disability Rights Montana